

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

LAKE UNION DRYDOCK COMPANY,)	
)	PCHB NO. 92-70
Appellant,)	
)	
v.)	
)	ORDER DENYING MOTION
STATE OF WASHINGTON,)	FOR DISMISSAL AND GRANTING
DEPARTMENT OF ECOLOGY,)	MOTION FOR PROTECTIVE ORDER
)	
Respondent.)	
)	

This matter comes before the Washington State Pollution Control Hearings Board (Board) on a July 31, 1992 Motion for Dismissal and Motion for Protective Order by Respondent Washington State Department of Ecology (DOE) through Assistant Attorney General Ronald L. Lavigne.

DOE Notice of Violation No. DE91WQ N255 and DOE Civil Penalty Order Number DE 91WQ N256 for forty three thousand, five hundred dollars (\$43,500) was received by appellant on February 5, 1992 for alleged noncompliance with numerous conditions of NPDES Permit No. WA-003007-4 and water quality violations.

Appellant Lake Union Drydock Company applied for relief of the Civil Penalty on February 20, 1992, and the DOE affirmed the full penalty on March 12, 1992.

The appeal, PCHB No. 92-70, was filed with the Board on April 13, 1992, by Administrative Manager Jim Francis, Lake Union Drydock Company.

The following documents were filed and considered:

1. Respondent DOE's July 31, 1992 Motion for Dismissal, and Memorandum in Support and exhibits;

1 In Ecology, supra, (reversed on other grounds Thurston County No. 91-2-01812-7) we held:

2
3 "Saturdays are not excluded from the computation of the appeal period, nor are
4 Saturdays to be considered "holidays" for purposes of applying RCW 1.12.040 to this
5 case."

6 It is the second phrase of this conclusion that we now revisit. While a Saturday is not a
7 "legal holiday" enumerated in RCW 1.16.050, it nonetheless is a day when this Board's office
8 is closed to the transaction of business. There is a statutory basis for Saturday closure at RCW
9 42.04.060:

10 All state elective and appointive officers shall keep their office open for the
11 transaction of business from eight o'clock a.m. to five o'clock p.m. of each business
12 day from Monday through Friday, state legal holidays excepted. On Saturday, such
13 offices may be closed. . . .

14 Based upon the statutory closure which prevents filings of appeals on Saturday, we
15 conclude that Saturdays are a "holiday" within the meaning of that term in RCW 1.12.040.
16 To the extent that Ecology, supra, is to the contrary, it is overruled.

17 We note as well that our rule for computation of time, WAC 371-08-235, is consistent
18 with this interpretation:

19 Computation of time. The time within which any act shall be done, as provided by
20 these rules, shall be computed by excluding the first day and including the last, unless
21 the last day is a Saturday, a Sunday, or a legal holiday, and then it is excluded and the
22 next succeeding day which is neither a Saturday, a Sunday, nor a legal holiday, is
23 included. . . . (emphasis added.)

24 II

25 In this appeal the thirty day count started on March 12, 1992, and ended on Saturday,
26 April 11, 1992. Therefore, under RCW 1.12.040 (Saturday being a holiday with the Board's
27 office officially closed), and by WAC 371-08-235, the Board holds that the appeal was timely
filed on Monday, April 13, 1992.

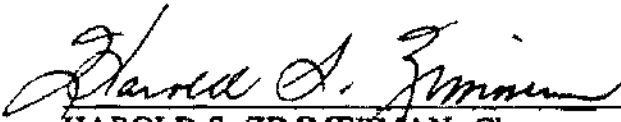
1
2 ORDER

3 Respondent's Motion to Dismiss is DENIED. Respondent's Motion for Protective
4 Order is GRANTED for a period of thirty (30) days from the date of this Order.

5 DONE this _____ day of _____, 1992.

6 POLLUTION CONTROL HEARINGS BOARD

7 
8 ANNETTE S. MCGEE, Presiding

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10 HAROLD S. ZIMMERMAN, Chairman
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14 P92-70M
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1 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
2 STATE OF WASHINGTON

3 LAKE UNION DRYDOCK COMPANY,)
4 Appellant,) PCHB NO. 92-70
5))
6)) ORDER DENYING
7 STATE OF WASHINGTON,) PETITION FOR RECONSIDERATION
8 DEPARTMENT OF ECOLOGY,)
9 Respondent.)
 _____)

10 On September 21, 1992, respondent Department of Ecology (DOE) filed its Petition for
11 Reconsideration and Memorandum in Support with the Washington State Pollution Control
12 Hearings Board (Board) to reverse their Order Denying the DOE's Motion for Dismissal of the
13 above captioned matter, based on late filing.

14 Having carefully reviewed the Petition and references for the Reconsideration, the
15 Board is persuaded that the Request should be denied.

16 I

17 RCW 1.12.040 provides that, when counting days, Sundays and holidays are not
18 counted. RCW 42.04.060 requires state agencies to close on legal holidays and allows closure
19 on Saturdays.

20 II

21 We read these two statutes together so that the integrity of both statutes is maintained.
22 State v. O'Neill, 103 Wn.2d 853 (1985).

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III

We find that in RCW 1.12.040, the generic term "holiday" is not defined by statute and, accordingly, find its dictionary meaning. Estate of Little, 106 Wn.2d 269 (1986). In Black's Law Dictionary, Revised Fourth Edition, 1957, we find "holiday" defined, among others, as "A day upon which the usual operations of a business is suspended . . ."

IV

Reading the two statutes together, we find that our operations are suspended on Saturday (RCW 42.04.060) and are, therefore, "holidays" (RCW 1.12.040) which are to be excluded when counting days.

V

The above is reflected in our WAC 371-08-080, and we re-affirm our dismissal of the DOE's Motion for Dismissal.


ORDER

THEREFORE, IT IS ORDERED that the Petition is DENIED.

DONE this 29th day of September, 1992.

POLLUTION CONTROL HEARINGS BOARD


ANNETTE S. MCGEE, Presiding


HAROLD S. ZIMMERMAN, Chairman

P92-70M